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Final Technical Report -- Mineral Law Program

A. L. Sage

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A. L. Sage, III

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The Mississippi Mineral Resources Institute
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FINAL TECHNICAL

REPORT

MINERAL LAW PROGRAM

MISSISSIPPI LAW RESEARCH INSTITUTE

LAW CENTER

UNIVERSITY OF MISSISSIPPI

A.L. SAGE, III

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FINAL TECHNICAL REPORT

Attached hereto are research papers completed during project year 1983-84 by student researchers in the Mineral Law Program. The Mineral Law Program is conducted by the Mississippi Law Research Institute of the University of Mississippi Law Center. The Mississippi Mineral Resources Institute provides funding for student research, travel and commodities.

The principal investigator is A.L. Sage, III. In addition to his principal duty of directing student research, the principal investigator authored two articles for the Waterlog, a quarterly newsletter publications of the Mississippi/Alabama Sea Grant Legal Program. These two articles were a two-part examination of the consistency provision of the Coastal Zone Management Act of 1972 and its impact upon Outer Continental Shelf oil and gas lease sales.

During the 1984 project year the principal investigator undertook to determine the feasibility of a quarterly mineral law newsletter to be published for distribution to members of the Mississippi Oil and Gas Lawyers Association and the Mississippi Association of Petroleum Landmen. These people are the primary users of legal research of mineral law problems. They also possess the expertise necessary to identify real problems in the area of mineral law and are in daily contact with the field.

The response to the proposed publication of such a newsletter was enthusiastic, and the applicable officers of the two associations agreed to cooperate in such a project. The Oil and Gas Lawyers Association has a paper bank which provides an

excellent source of material for publication once it is updated by student researchers. The shorter papers attached hereto cover topics of perennial interest to lawyers and landmen and will be published in the newsletter.

The topics covered by these papers are:

1. The rights of life tenants and remaindermen in oil and gas leasing transactions.

2. The operation of the proportionate reduction clause in oil and gas leases.

3. The effect on mortgages on land involved in oil and gas transactions.

4. Oil and gas leasing and homestead rights.

5. Powers and Limitations of Trustees, Executors and Guardians to Lease Oil and Gas Interests

In addition to these papers, research was completed on a topic of much broader scope. The laws and regulations governing oil and gas development on the Outer Continental Shelf. Concentrating principally on the permitting requirements of the National Environmental Policy Act and the Outer Continental Shelf Lands Act, this paper examines the extensive procedures which must be followed before oil and gas actually reaches the refinery. Covered to a lesser extent are the numerous other laws which must be observed at various steps in the entire development process.

RIGHTS AND DUTIES OF THE LIFE TENANT AND REMAINDERMAN

Definitions

A life estate is an estate in land that exists for as long as a person lives, but that person does not have to be the owner of the life estate. Smith can own a life estate although the duration of the estate is determined by the life of Jones. When the life estate ends on the person's death, the title to the property must vest in another person. This person is the remainderman, and while the life estate is still in existence, the remainderman holds title to a "remainder" interest.

General Rules

In the absence of special provisions in the controlling instrument or unusual surrounding circumstances, the holder of a life estate in land is entitled to exclusive possession of the land. In addition, the life tenant is entitled to all income and profits which may be derived from the land during his tenancy. The life tenant may not commit waste of the corpus (the principal) . If the life tenant is found to commit any waste he will be held liable for it. The remainderman of the life estate is not entitled to any income and profits derived from the land during the life tenancy. The remainderman is entitled to protection against a wasting of the corpus by the life tenant. Kuntz, Laws of Oil and Gas § 8.1 (1964).

In the absence of any special provisions in the controlling instrument or any surrounding circumstance, the uniform rule of oil and gas law is that the life tenant or tenant for years, acting alone, is not privileged to take oil and gas from the

land, nor has such tenant the power to create such privileges in any others by leasing the land for oil and gas purposes. The rationale behind this rule is that the extraction of oil and gas depletes the corpus or inheritance and amounts to waste. Humble Oil and Refining Company v. Martin 289 F.2d 163, 168, (5th Cir. 1961). "[A] life tenant has no interest in or right to open and work new mines not in operation at the time he becomes vested with the estate. To do so would amount to the commission of waste, as a lasting injury to the inheritance." Pace v. State ex rei. Rice, 191 Miss. 780, 4 So.2d 270, 275 (1947).

In the absence of special provisions or circumstances, the remainderman, acting alone, also does not have the power to lease lands for oil and gas purposes. The rationale behind this rule is that the remainderman is not entitled to possession of the corpus, and thus may not interfere in any way with the possession of the premises. An oil and gas lease would give others an interest which would violate the life tenant's right to exclusive possession 2 Summers, Oil and Gas, § 224 (1959).

It is well settled that the life tenant and remainderman may jointly execute a valid oil and gas lease. See, Carter Oil Company v. McQuigg, 27 F.Supp. 182. (E.D. Ill. 1939)

EXCEPTIONS TO GENERAL RULES

If the mineral rights still follow the title to the land, the life tenant is entitled to extract oil and gas for his own benefit or to grant oil and gas leases to the land if the land is otherwise useless, and the sole or chief value of the land is for mineral purposes. Kuntz, Law of Oil and Gas, § 8.1 (1964).

If the life tenant, tenant in common, or remainderman can show to an equity court that the estate's assets are being lost through drainage of the oil and gas from the estate by operations on adjoining lands, the court may force an oil and gas lease on the parties if they cannot execute one by their own agreement. United North and South Oil Company v. Meredith, 272 S.W. 124. (Tex. App. Comm. 1925).

Under the open mine or open well doctrine, when the controlling instrument creating the life estate does not expressly preclude it, a life tenant may work or have worked or operated a mine, quarry or well which was opened before the creation of the life estate. The life tenant may do such even to exhaustion of the corpus, not only for his own personal use but also for a profit. The life tenant is entitled to all proceeds which are derived from such operations without the obligation of making a provision for any fund to offset depletion (waste) of the mineral estate. The rationale for such doctrine is that the grantor of the life estate, by the previous opening of mines on the land, impressed it with that character of use and enjoyment, and, in absence of a contrary provision in the controlling instrument granting the life estate, manifests the intent that the life tenant may likewise use and enjoy the land. 31 C.J.S., Estates § 42.

The leading Mississippi case on the open well doctrine is Martin v. Eslick, 229 Miss. 234, 90 So.2d 635 (1957).

There are special situations under the open well doctrine which give rise to certain rights of the life tenant. Where the owner of a preceding estate of inheritance authorizes a mine or

well to be opened or drilled on his land, and such mine or well is not opened or drilled until his death, the mine or well is considered an open mine or well as of the date of the owner's death, and the life tenant is entitled to all royalties received from the well or mine as such royalties are considered issues and profits of the land. Mining by the life tenant will be allowed if the former owner of the fee has impressed on the fee the character of mining land, by executing an enforceable lease for that purpose prior to the commencement of the life estate, although no mines or wells have been opened thereunder until after the commencement of the life estate. The life tenant is therefore entitled to all occuring royalties although actual drilling operations do not commence until after the life estate begins. The life tenant may sink new shafts and open new pits on veins of minerals already opened, and he may pursue the veins opened to the limits of the tract but not into another distinct tract on which no opening was made. 31 C.J.S, Estates § 4 2 p. 79.

If the mines or wells have had work discontinued prior to the creation of the life estate, such cessation of work for however long a period will not defeat the right of the life tenant to continue it, but if the mine has been abandoned with an executed intention of devoting the land to some other use, the work cannot be continued by the life tenant. Id.

If the owner of a future interest or his lessee enters the corpus and produces oil or gas without permission of the life tenant, the life tenant may treat such actions as a change in the mode of use of the corpus and will be entitled to the production

just as if the open mine doctrine was in effect. Kuntz, Law of Oil and Gas, § 8.3 (1964).

INCOME DISTRIBUTION, REMEDIES, DIVISION

OF RENTS AND ROYALTIES

If the life tenant and remainderman lease the mineral rights by a joint lease, they may agree as to the division of the rents and royalties. Welborn v. Tidewater Assoc. Oil Co., 217 F. 2d 509 (10th Cir. 1954) .

In Mississippi it is held that the interest conveyed by a mineral lease is a determinable fee and that the royalty payable under such lease is an interest in the land itself. The oil in place is a part of the real estate and cannot be withdrawn without injury to the inheritance, and therefore portions of the oil produced and paid as royalty represent principal or corpus and only the income thereon derived from any investment of such funds should be paid to the life tenant. The beneficiary of a trust vested with a life estate is entitled only to the income derived from any investment of funds paid as oil royalties. Martin v. Eslick, 229 Miss. 234, 90 So.2d 635 (1957).

ACCOUNTING BY FIDUCIARIES AND TRUSTS

The terms of the controlling instrument prevail in determining whether or not a trustee involved in a life estate has the power to lease for oil and gas purposes and if such instrument is silent the state's statutory provisions control. If the fiduciary is court-appointed, the statutory provisions governing the appointment will likewise control the fiduciary's powers. A trustee with the power of sale is also given the power to lease for oil and gas if the controlling instrument contains

no restrictions on the power of sale. This is premised on the reasoning that the power to lease the oil and gas are included within the greater power of sale. The lesser power to manage, rent, lease and control the land does not carry the power to lease for oil and gas purposes, because an oil and gas lease authorizes a depletion of the corpus and is equal to a sale. A power to mortgage which does not include a power of sale does not include the power to grant an oil and gas lease. Kuntz, Law of Oil and Gas, § 8.7 (1964).

The power to lease for oil and gas, or the absence of such power in the fiduciary is relevant for the purpose of determining the validity of any lease he might execute and is also relevant in determining the allocation of proceeds created by the lease as between the life beneficiaries and the future beneficiaries. There are two views in determining such distribution of proceeds in the beneficiaries. One view is to treat the situation as if the open mine doctrine was in effect therefore giving the life beneficiary all proceeds during his life. The other view is that the power to lease by the trustee does not involve the open mine doctrine, and any proceeds from an oil or gas lease executed by the fiduciary are apportioned according to the rules which would be involved absent the open mine doctrine. If the open mine doctrine is not applicable, the life beneficiaries are entitled to the delay rentals under the lease as income. Any royalties received from the lease represent corpus, therefore the life beneficiaries would take the income from interest with the future beneficiaries receiving the principal sum of the accumulated royalties upon termination of the life estate. A present

allocation may be made between principal and income by computation of present values of the respective interests. There is a split of authority as to any bonus received for an oil and gas lease executed by a trustee. One view treats the bonus as income which would go to the life beneficiary. The other view takes the position that the bonus is paid for the right to deplete the corpus and represents the corpus of the land. The life beneficiary would then take the income earned by the bonus and the principal sum would go to the future beneficiaries at the termination of the life estate. Id.

Due to the above trust relationship a uniform act was drafted to resolve the difficult problems of adjustment of principal and income between life tenants and remainderman in trusts and other estates in property. The act is The Uniform Principal and Income Act.

Mississippi has adopted the above law: MISS. CODE ANN. §§ 91-17-1 et. seq. (1972) . The following are the applicable statutes governing allocation of proceeds derived from an oil and gas lease given by a trustee.

§ 91-17-3 DEFINITIONS

As used in this chapter: (a) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

(b) "Inventory value" means the cost of property purchased by the trustee and the market value of other property at the time it became subject to the trust, but in the case of a testamentary trust the trustee may use any value finally determined for the purposes of an estate or inheritance tax.

(c) "Remainderman" means the person entitled to principal, including income which has been accumulated and added to principal.

(d) "Trustee" means an original trustee and any successor or added trustee.

§ 91-17-19 DISPOSITION OF RECEIPTS FROM TAKING NATURAL RESOURCES FROM LAND.

(1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income.

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payments bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in the preceding paragraphs of this section shall be apportioned on an yearly basis in accordance with this paragraph, whether nor not any natural resource was being taken from the land at the time the trust was established. Twenty-seven and one-half per cent (27 1/2%) of the gross receipts (but not to exceed fifty per cent (50%) of the net receipts remaining after payment of all expenses, direct and indirect, computed without allowance for depletion) shall be added to principal as an allowance for depletion. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.

(2) If trustee, on January 1, 1967 , held an item of depletable property of a type specified in this section, he shall allocate receipts from the property in the manner used before said date, but as to all depletable property acquired after said date by an existing or new trust, the method of allocation provided herein shall be used.

(3) This section does not apply to timber, water, soil, sod, dirt, turf or mosses.

POWERS AND LIMITATIONS OF TRUSTEES , EXECUTORS , AND GUARDIANS TO LEASE OIL AND GAS INTERESTS

TRUSTEES

Section 215 of Summers, § 478, Leases Am Jur 2d and § 5.7 of Hemingway say that the trust instrument must expressly empower the trustee to execute oil and gas leases. Section 478, Leases Am Jur 2d says the power may be implied where "....it is necessary to the exercise of other powers and duties conferred upon the trustee, where a trustee is directed to hold, manage, care for, and collect income from trust property without being given a power of sale." Atwood v. Kleberg, 135 F.2d 452 (C.C.A. Tex.1943) cert, denied, 64 S. Ct. 45 , 320 U.S. 744 , 88 L. Ed. 441, holds that the power of a trustee to lease property of the trust may be implied from the terms of the trust agreement.

Summer, at 19, cites an Illinois case that says a trustee under a will with power "... to hold, manage, rent, lease, and control property, and pay proceeds annually to a named beneficiary for life with remainder to his heirs, did not give the trustee authority to lease the land for oil and gas." Summers does say if the trustee has power to sell real property he is usually held to have the authority to execute an oil and gas lease.

Section 319, Leases of C.J.S. suggests a looser standard than Summers. First National Bank v. Magnolia Petroleum Co. , , 144 Kan. 145 , 62 P.2d 891 (1936), held that a will creating a trust and authorizing the trustee to manage the testator's ranch in accord with the testator's general policy in management gave

the trustee the power to renew expiring oil and gas leases on the ranch which the testator had executed in his lifetime.

Section 480 , Leases Am Jur 2d. says that generally a trustee cannot grant a lease for a period beyond the duration of the trust. Upon expiration of the trust, the lease would be void. The instrument obviously can expressly empower the trustee to grant a lease longer than the term of the trust but some authorities hold that the trust instrument may imply the power. Section 319, Leases C.J.S. says if the trustee gives effect to the scheme and intent of the trustors, a trustee may lease property beyond the period of trust.

Statutes in many states empower trustees to grant leases. Mississippi Code Annotated § 91-9-107(k)(1972) (the Uniform Trustee's Powers Act) states that trustee can enter into a lease or arrangement for exploration and removal of mineral or other natural resources, or enter into a pooling or unitization agreement without court authorization.

EXECUTORS AND ADMINISTRATORS

According to §215 of Summers, the power of executors and administrators to execute oil and gas leases parallels the power of a trustee. The power must be present in the will, but may be implied from express provisions. A statute or court order may grant the power, §297$_e$ Executors and Administrators C.J.S. On the other hand, §249, Executors and Administrators, Am Jur 2d states either a statute or court order must grant the power to execute a lease; the section does not mention express provisions. Heming-way, at 208, says the whole problem can be avoided "... through the expedient of requiring all parties in interests, viz., the

independent executor, heirs or devisees, to join in the execution of the leases. If the executor is also a devisee, he should execute the lease both in his representative and individual capacities."

GUARDIANS

Despite the fact that at common law a guardian could lease the land of his ward, §214, Summer says the guardian cannot execute an oil and gas lease. Most states now have statutes prescribing procedures to obtain court approval of such leases by the guardian. Mississippi Code Annotated §93-13-43(1982) says that after petitioning the court, serving process on next of kin and getting court approval, a guardian can execute an oil and gas lease. The Code does not state whether or not leases can run beyond the period of guardianship. Summer says that state statutes vary. Summer, at 14, cites a Texas statutes that denied the power to grant leases extending beyond the ward's minority. In that event the lease should continue in force as long as is producing in paying quantities. However, absent a statute, Hemingway states, at 109, that a lease executed by a guardian of a minor terminates upon majority.

SUMMARY

For a trustee to execute an oil and gas lease, the trust instrument must expressly empower him, or express provisions must imply the power, or a statute must empower him to do so.

For an executor or an administrator to execute an oil and gas lease, the will must expressly or impliedly empower him, or a statutory provision must exist.

For a guardian to execute and oil and gas lease, he must have statutory or judicial approval.

OIL AND GAS LEASES AND HOMESTEAD RIGHTS

"A conveyance, mortgage, deed of trust or other incumberance upon a homestead exempted from execution shall not be valid or binding unless signed by the spouse of the owner if the owner be married and living with the spouse." Miss. Code Anno. §89-1-29 (Supp. 1984). Section 217, Summers and §5.104, Leases, The American Law of Property concur with this basic principle of homestead property law. However, exceptions to this basic rule exist.

For example, §89-1-29 provides a procedure whereby, when one spouse is adjudged insane, the other spouse can request that the chancellor to empower him to encumber the homestead by himself. The statute also contains another exception for mortgages or deeds of trust executed in favor of the Farmers Home Administration.

According to Mississippi case law, abandonment of the homestead or change of residence may eliminate the need for both signatures. A husband may convey abandoned homestead by a separate deed. Lindsey v. Holly, 105 Miss. 740 , 63 So. 222 (1913). A temporary removal because of necessity by husband and wife, their retaining an intention to return to the homestead premises, is not an abandonment of the homestead. Collins v. Bounds, 34 So. 355, 82 Miss. 447 (1903). Furthermore, a husband who in good faith has selected another homestead may convey good title to his former homestead without the joining of his wife in the deed. Livelar v. Kepner, 146 So. 2d 346 , 244 Miss. 723 (1962). Section 5.113 of the American Law of Property defines abandonment as the "voluntary removal from the homestead property

without the intent to return and occupy it as a home. Intent is the dominant element in abandonment, but the owner's subjective intent is not a reliable guide, and resort must be made to the objective intent which his conduct manifests." Estoppel may be asserted against a spouse who claims the homestead, but Summers in §217 says, "Courts are reluctant to hold that a husband or wife is estopped to deny the validity of a lease of homestead lands, where there is no actual fraud upon the lessee." The Mississippi Supreme Court manifests this reluctance. Bulen v. Lily, 37 So. 811, 85 Miss. 344 (1905); Kyle v. People's Bank & Trust Co, , 187 So. 534 , 186 Miss. 287 (1939); Gardner v. Cook., 158 So. 150, 173 Miss. 244 (1934).

As a corollary to the basic homestead proposition, §10.17 the American Law of Property says that both spouses must agree to extensions, renewals or material alterations. However, the author does cite Wilson v. People's Gas Co., 75 Kan. 499 , 89 P. 897 (1907) which held, "An agreement changing the terms and manner of paying rentals of a gas and oil lease on a homestead from cash to a royalty of one-tenth of the product does not enlarge or diminish the leasehold estate, and need not be in writing or consented to by the wife of the lessor."

An improperly executed oil and gas lease of homestead property may be ratified, says Summers, §606.1. A royalty deed properly executed, joined, or acknowledged which recites that it is made subject to the lease ratifies that lease.

The main anamoly between oil and gas law and homestead law is the treatment of royalties; they go to the surviving spouse, a mere life tenant. Summer cites three Texas cases to this effect.

White v» Blackmun, ,168 S.W. 2d 531 (Civ. App. 1942), held that a homestead right in land contains every element of a life estate created by operation of law so that a widow is entitled to oil and gas royalties from the homestead and not merely the interest (income) on the royalties. Thompson v. Thompson, 236 S.W. 2d 779, 149 Tex. 632 (1951) , held that the oil and gas royalty reserved in a lease of homestead land is of such a nature that the surviving widow of the lessor was entitled to the royalties payable under the lease from wells drilled during the lifetime of the husband as long as she occupied the land as family homestead. The lessor left a will devising the oil and gas in the land to his daughters and the land to his son. The widow renounced the will and claimed homestead in the oil and gas royalties. The husband owned only an individual one-fourth interest in the oil and gas. The court held that the widow was entitled to one-fourth of the royalties from the homestead land. Youngman v. Schular, 281 S.W. 2d 373 (Civ. App. 1955), affirmed 288 S.W. 2d 495, held that where a husband and wife executed a valid oil and gas lease of their homestead, and after the husband died intestate oil was produced on the homestead land, the ”open mine" rule was applicable and the wife as life tenant was entitled to all of the oil royalty.

The American Law of Property, mentions two aspects of homestead law not particulary related to oil and gas but which pose problems in oil and gas transactions.

Section 5.104 states, "Although a lease of the homestead itself may by invalid for lack of joinder of both spouses, if the lease includes other property as well, it is generally held valid

as to the excess, unless the terms of the agreement are such that a court will say that the parties intended the lease to be effective in its entirety or not at all."

Section 5.97 addresses the problem of proceeds of the homestead but does not specif rally mention oil and gas. The author states that limits should be imposed on the amount of proceeds exempted. Some agricultural states have done this for crops. Listed are three states that have imposed general limits on proceeds.

(1) Cal. Civ. Code (Deering, 1941), §1265.

(2) Ga. Code (1933), §51-802.

(3) Mo. Rev. State. Ann. (1939), §608.

CONCLUSION

A homestead conveyance must be joined, but it can be ratified. The character of the homestead can be changed or abandoned, and then one spouse (the record owner) could then convey it. However, despite the fact that the surviving spouse is a life tenant, royalties go to that person. If the lease convey more than than the homestead, the lease may be valid as to the excess. Finally, there may be limits to the amount of exempt royalties.

THE PROPORTIONATE REDUCTION CLAUSE OF THE OIL AND GAS LEASE

To protect a lessee where there is a deficiency of acreage in the land leased, or where the lessor owns less than the entire fee simple in the land or mineral interest, leases contain what is known as a proportionate reduction clause. The clause is specifically designed to modify the delay rental provisions of the drilling clause and the royalty clause to provide for a reduction in the amount of those payments if the lessor should over less than the entire fee simple estate in the leased premises. Occasionally such a provision is combined with the warranty and subrogation clauses, but more commonly it appears as a separate clause. [I]

The language used in the clause itself is important in considering the application of the clause to various situations. In Texas Co. v. Parker, 247 S.W. 2d 179 (Tex. 1952) the leasing cotenants sought to have a lease removed as a cloud upon their title on the grounds that it had terminated by failure to pay delay rentals as provided for in the lease. The lease was executed in 1950 for a primary term of 10 years and provided for annual delay rentals of $160. The lessor's interest in the property was an undivided 1/2 interest and this was the interest purported to be leased by the granting clause of the lease. The proportionate reduction clause provided that "if the lessor owns an interest in said land less than the entire fee simple estate, then rentals shall be reduced proportionately." Drilling operations were not commenced during the first year of lease, but

before the anniversary date rentals of $80 were tendered by lessee and rejected by lessor as inadequate. A judgement cancelling the lease was affirmed, the court concluding that the lessees were not entitled under the operation of the proportionate reduction clause to reduce the amount of rentals stated in the delay rentals clause. The court declared that, reading the lease as whole, the delay rental clause referred to the undivided one-half interest of the lessors and that when the lessee agreed to pay $160 rental on "said land", this referred to the interest conveyed by the lessors, namely the lessors' undivided one-half interest.[2]

However, the decision in the Parks case has been criticized. It is suggested that reference to land in the proporationate reduction clause is intended as a reference to the full fee simple interest and that this is true regardless of whether a fraction is stated in the[3] lease.

As to the royalty clause of the lease, not quite as common a problem is presented by the proportionate reduction clause. For example, when an oil and gas lessor conveys and warrants the entire mineral estate and reserves 1/8 royalty on the "oil and gas produced and saved from said land," although he owns only a part of the mineral estate, the lessee, by operation of the clause, may reduce the royalties payable to lessor in proportion to the failure of the title.[4]

Greater problems do exist however where then parties agree to an additional or excess royalty. In Richland Plantation Co. v. Justin-Means Oil Co., 671 F.2d 154 (5th Cir. 1982) the parties

entered into a lease covering 4251 acres of Richland's land. At the same time the parties signed an unrecorded letter agreement providing for payment of an additional royalty in the event of production. The lease contained a proportionate reduction clause and at the time of the execution of the lease, Richland owned only one-half of the mineral estate. Thus the issue presented to the court was whether the proportionate reduction clause would operate to reduce the additional royalty payable as a result of the supplemental agreement. The court, answering in the negative, held that the additional or overriding royalty provided for in the letter agreement was not intended to be diminished by the proportionate reduction clause. The court in Justin-Means relied primarily on the intent of the parties.

A different factual situation and result was present in Newport Oil Company v. Lamb 15 0. & G.R. 834 , 352 S.W. 2d 861 (Tex. 1962). Here the lease called for a 1/8 royalty and contained a proportionate reduction clause. An appended typewritten rider clause set out an additional excess royalty of 1/8 of 7/8. The lessor later claimed that the excess royalty was not subject to the operation of the proportionate reduction clause. The court held for the lessee, characterizing the overriding royalty as simply a royalty and in the absence of such words as "without reduction", which were not present here, the proportionate reduction clause operated to reduce the additional royalty. In other words, the words "without reduction" or similar language must be used to escape the operation of the

proportionate reduction clause when an additional royality interest is created.

Another case involving the effect of the clause upon an additional payment is Probst v. Ingram, 373 P.2d 58 (Okla. 1962). Here the plaintiff, owner of an oil and gas lease under which four wells had been drilled, contended that the proportionate reduction clause should apply to an additional payment provided for by the lease. The court held that the additional payment had the legal effect of a bonus and that if lessee had intended for the proportionate reduction clause to apply to the additional payment, he would have been more clear and specific as to his interest. The court noted that from the language used, it was the intent of the parties that lessor should receive something in addition to rentals and royalty. At no point in the lease did the lessee state his intent that the clause should apply to the additional payment.

Problems may also arise in areas involving the warranty clause and the proportionate reduction clause. In Klein v. Humble Oil 86 S.W. 2d 1077 (Texas 1935) , B, the owner of a 60 acre tract of land subject to an exception of a 1/8 royalty interest in the east 10 acres, executed an oil and gas lease to the entire 60 acres, providing for a 1/8 royalty and containing a clause of general warranty and a proportionate reduction clause. B argued that he had no authority to subject the 1/8 royalty interest to the lease, and that the proportionate reduction clause served to reduce the estate conveyed. The issue thus presented to the court was whether the proportionate reduction

clause in the lease nullified the effect of the general warranty clause. The court said no and held that B is not permitted to assert a royalty interest of 1/8 of 7/8 in the east 10 acres in which he only owned 7/8 of the minerals subject to the reserved right of the predecessor in title. So apparently, the proportionate reduction clause does not mitigate in any way the obligation of the lessor under the general warranty claim.[5]

Clemmons v. Kennedy, 68 S.W. 2d 321 (Tex. 1934), approached the problem of reconciling inconsistent provisions of a mineral deed subject to an existing oil and gas lease containing a proportionate reduction clause. Here the mineral deed purported to convey one-half of the the minerals subject to an existing oil and gas lease, but covering only 1/2 of all royalties and rentals due to be paid under the lease. The lease purported to cover the entire tract but lessor owned only an undivided one-half interest. By operation of the proportionate reduction clause, the rentals and royalty due lessor were reduced by one-half. The issue was whether the grantor of the mineral deed was entitled to one-half of all rent and royalties under the lease or to merely one-half of the rents and royalties actually payable to the lessor by operation of the proportionate reduction clause. The court held for the grantee and said he was entitled to one-half of all rents and royalties payable under the lease. These two cases, Klein and Clemmons, apparantly establish the view that the lessor cannot take advantage of the proportionate reduction clause for the purpose of reducing the interest undertaken to be

conveyed either to his lessee or to his grantee in a mineral deed.[6]

Another problem which may arise in this area is what happens when the parties delete the proportionate reduction clause in the lease. In Gresham v. Turner 382 S.W. 2.d 791 (Tex. 1963), Gresham executed an oil and gas lease to Turner which provided for a 1/8th royalty. The lease contained a proportionate reduction clause which was deleted. At the time of execution of the lease, the lessor owned only a 1/80th mineral estate. The lessors contend that they are entitled to a royalty of 1/8 of 8/8. The lesser, however, asserted the position that lessors are entitled to only 1/80 of the 1/8 royalty. The trial court entered judgement that lessors were entitled only to 1/80th of the 1/8 royalty. This ruling was affirmed the court saying that the intent of the parties is found within the four corners of the instrument. The royalty was "reserved" and that can mean only that it is retained out of that which is granted. Here that which was granted was a 1/80 mineral interest and therefore the 1/8 royalty reserved must come out of this 1/80. This decision shows how the court can fashion relief in the absence of a proportionate reduction clause.

The importance of changing the proportionate reduction clause is the effect a change will have on the other clauses in the lease.

FOOTNOTES

[1]Kuntz *t* Oil & Gas § 5 2.4

[2]William Myers, Law at Oil & Gas, § 505.1

[3]1 O.G.& R. 559 (1952) Discussion Notes

[4]Summers, Oil & Gas, § 609.2

[5]14 Texas L. Rev. 563 (1935)

[6]14 Texas L. Rev. 563 (1935)

EFFECTS OF MORTGAGES OF LAND ON OIL AND GAS LEASING TRANSACTIONS

INTRODUCTION

In the execution of practically every oil and gas lease or mineral conveyance, the existence of a mortgage lien on the land must be considered, since most rural lands are covered by liens. The lawyer for the purchaser of an oil and gas lease or mineral interest property notes in his title opinion the existence of the lien and normally requests its release or subordination as to the mineral interest conveyed. Certainly the landowner will not desire to obtain a release unless the bonus or consideration he receives is more than sufficient to discharge the lien. The lien holder, may want to keep his money invested and may not accept amounts not due. The lien holder may not be willing to subordinate his lien to the mineral interest because, in case of foreclosure, the mineral interest would have priority.

A practical solution may be a subordination by the lien holder as to the lessee's interest in return for an assignment from the landowner of the delay rentals and royalties (or a portion thereof) due under the lease. Then in event of foreclosure, the purchaser would acquire the landowner's title subject to the mineral lease. This would usually be satisfactory, because the purchaser at foreclosure would be entitled to any delay rentals and royalty production, and if the lease terminated, he would have full title to the minerals.

DIFFERING THEORIES

Where land is subject to an outstanding mortgage, the ability of the mortgagor to execute an effective oil and gas lease will depend upon whether the particular jurisdiction follows a title or lien theory of mortgages.

In a title theory state, title and the right to possession of the property passes to the mortgagee upon default. Production of petroleum products by the mortgagor will constitute an injury to the security of the mortgagee, enjoinable in equity and compensible in damages for the products removed.

In title theory states, an oil and gas lease should be executed or ratified by both the mortgagee and the mortgagor. In these jurisdictions the right of the mortgagor to use the land is in the nature of a license, and is usually limited to acts that are proper in the course of good husbandry. This view would deny to the mortgagor the right to develop the land for oil and gas, as it would to his lessee. It has been held in Federal Land Bank of New Orleans v. Mulhern, 180 La. 627 , 157 So. 370 , 95 A.L.R. 948 (1934), that where the mortgagor has opened a mine or well prior to the execution of the mortgage, under the open mine doctrine he has the right to continue production.

In a lien or hybrid theory jurisdiction the mortgagor retains title and possession to the property upon default, subject to the security rights of the mortgagee. These rights are non-possessory in character, being in the nature of a right to sell the subject property upon default. Assuming that the mortgagee buys in at a foreclosure sale, in a lien state its

right thereupon becomes possessory, whereas in an intermediate or hybrid theory state the right of the mortgagee becomes possessory upon default.

In a lien or hybrid theory state, injury to the security of the mortgagee will not occur until his security is impaired. In Carrol v. Edmondson, 41 S.W. 2d 64 (Tex. Comm'n App. 1931), impairment occurred when the value of the property became less than the balance due on the debt. The owner of the land subject to the mortgage has the right to execute an oil and gas lease which will vest in the lessee the right to possession, limited only by provisions of the mortgage or safeguards erected by judicial decision. Unless the mortgage instrument defines removal of such products as waste (depletion of the estate) the right of the mortgagee or his lessee to remove petroleum products is limited to that point at which the security of the mortgage is impaired.

In Federal Land Bank of New Orleans v. Mulhern, supra, the court held that a clause in the mortgage prevented waste of any kind, including the removal of minerals. Even though only the removal of timber was the only natural resource specifically mentioned, the court held that "the removal of minerals from the land was as much waste as the removal of timber." The mortgagors failed to comply with their obligations to prevent deterioration and waste of the realty, for which reason the mortgagee, under a clause of the mortgage, was within its rights in declaring the balance on the mortgage due and payable. The result of drilling for oil and gas was that "the fee was impaired and the value of

the realty was diminished to the extent of the value of the oil and gas reduced to possession, and the mortgagee's security weakened."

Therefore, premises which have been mortgaged or which are subject to a deed of trust usually may not be developed by the owner nor by his lessee (unless the lease is senior to the security interest) without the consent of the secured creditor. Absent such consent, development of the land for minerals will generally be said to constitute voluntary waste which is enjoinable by the secured creditor or for which he may recover damages, and typically such waste will occasion an acceleration of the mortgage debt under the terms of such security agreements. William and Meyers, Law of Oil and Gas, § 518.

SUBORDINATION

In both lien and title theory states the mortgagee should be overjoyed if petroleum products were found on non-residential property, for this will constitute an additional source of income to the mortgagor. In title states the payment of the economic benefits under the lease would seem to be payable directly to the mortgagee. In the absence of an effective assignment, they are not so payable in lien or hybrid theory states, at least not until the mortgagee acquires the right of possession. However, the oil and gas lessee is at least as anxious to have his lease out from under the prior mortgage. Therefore, in the usual situation when an oil and gas lease is executed after the mortgage is executed, the mortgagee will execute a subordination agreement, subordinating the mortgage to the oil and gas lease.

In return the mortgager executes an assignment of the economic benefits (or part thereof) of the lease to the mortgagee.

Before land can be developed by a lessee of a mortgagor, it is usually necessary, therefor, to obtain a subordination agreement from the mortgagee. Such an agreement will normally provide specifically for the allocation of the proceeds of the lease between the mortgagor and the satisfaction of the debt for which the mortgage or deed of trust is security. Williams and Meyers, supra, § 518.

An example of a subordination agreement is as follows:

> If any part or all of said lands are now or hereafter mortgaged, Lessor will promptly execute recordable assignment of all royalties and rentals as payable hereunder, to the owner of such mortgage, upon request of Lessee, if necessary to secure recordable agreement from such owner that said mortgage shall be subordinated to this lease.
>
> or
>
> Lessors consent to the subordination to this lease of any mortgage, deed of trust, or lien now upon said land.
>
> (See Frede v. Lauderdale, , 322 S.W.2d 379 (Tex. Civ. App. 1959) where an argument was unsuccessfully made that the subordination agreement actually was a release of the minerals from the mortgage.)

In Continental Securities Corp. v. Wetherbee, 187 La. 773, 175 So. 571 (1937), an exception clause in the mortgage read:

> This act of the mortgage does not in any way affect or apply to the oil ... which has been or may be produced from the above described property . . . [mortgager] shall have the right to sell said oil and/or gas . . . free from any lien, privilege, or encumbrance resulting from this mortgage.

The court held that the mortgage did not in any way affect nor did the parties intend it to cover or affect the right to produce

oil from the premises. The production from the well was freed from the mortgage but all physical equipment used in connection with the well, including pipes, rigs, etc. was covered by the mortgage. This result occurred because the instrument stipulated that the oil wells were mortgaged, that such wells were an improvement on the premises and therefore subject to the mortgage.

Another provision relating to mortgages and other liens may be included in the lease for the benefit of the lessor rather than the benefit of the lessee. In order that the lease shall not impair the ability of the lessor to borrow upon the security of the premises, an occasional lease provides that the lease shall be subordinated to certain mortgages or other liens. An example of such a subordination agreement is as follows:

> This lease shall be subject to the lien of any mortgage or deed of trust hereafter executed by Lessor, his successors or assigns, to secure a bona fide loan or renewal of any such loan and Lessee agrees to execute and deliver all such documents as may be reasonably required in order to assure further such subordination of the lease.

Where the oil and gas lease is acquired subsequent to the mortgage, and the lessee does not assume payment of any part of the prior indebtedness, and where the bonus for the lease is not reduced by reason of the outstanding security instrument, the lease is "subject to" the lien of the prior mortgage, but the lessee is not personally liable for payment. Where the debtor defaults and the the mortgage is foreclosed, normally all of the property will be sold and the later oil and gas lease, unless a subordination was obtained, will be wiped out. Skelly Oil Co. v.

Johnson , 209 Ark. 1107 , 194 S.W.2d 425 (1946); State ex rel. Comm'rs of Land Office v. Reynolds, 201 Oki. 400 , 206 P.2d 184 (1949) .

SUBROGATION

A subrogation clause is designed to deal with the problems that can arise when the lessor's interest is encumbered at the time the lease is granted. Where an oil and gas lease is given after a mortgage has been placed on the land, a foreclosure of the mortgage will ordinarily destroy the rights of the lessee under the lease. Ball v. Coyle, 108 Okl. 30 , 233 P.750 (1925); Todd v. Hunt, 127 S.W.2d 340 (Tex. Civ. App. 1939). The lessee does have some rights, however, because it has been held that the lessee is entitled to remove equipment that can be removed without injury to the land Smith v. Bush, 173 Okl. 172 , 44 P.2d 921 (1935).

The lessee may also require a marshaling of assets, which includes the "two funds" and the "inverse order of alienation" doctrines. In cases involving oil and gas leases, the courts have not found it necessary to draw a distinction between the two doctrines, but the results in the cases reveal that both of them have been applied. Thus, the "two funds" doctrine has been applied to protect rights under an oil and gas lease where the prior mortgage covered unleased land owned by the mortgagor as well as land covered by a subsequent oil and gas lease. In this situation, the lessee can require that the unleased land be sold first to satisfy the mortgage debt. The "inverse order of alienation" doctrine has been applied where the subsequent oil

and gas lease covered the same land covered by the mortgage. In this instance, the lessee can require that the surface rights be sold first before resort is made to the oil and gas lease.

The oil and gas lessee may desire to discharge the mortgage debt or other encumbrance to protect his interest. If he does so, he ordinarily will be entitled to subrogation in order to require contribution from the owner of other interests that are subordinate to the mortgage. Osborne, Handbook on the Law of Mortgages (2d ed. 1970) , §§ 277-285 . It is common for the oil and gas lease form to contain a special subrogation clause which not only preserves the right to subrogation but also provides that the lessee may, at his option, recover payments which he has made from amounts that become payable to the lessor under the terms of the lease.

Subrogation clauses vary in a number of important particulars, including the following:

(1) the claims or obligations which the lessee is authorized to satisfy.
(2) whether the lessee may satisfy the claim or obligation prior to maturity thereof.
(3) whether thelessee is authorized to withholdthe payment of rentals, royalties and other sums payable to the lessor in satisfaction of its claim to reimbursement.

Although a subrogation clause is important, the lessee usually prefers not to satisfy such claim against the lessor. The lessee is not in the banking or money lending business and is not desirous of using his available funds in this manner. But unless such claim is satisfied, the lessee's estate may be extinguished by foreclosure of the mortgage or other lien.

An example of a subrogation clause is as follows:

> Lessor hereby warrants and agrees to defend the title to said land, and agrees that lessee, at its option, may discharge any tax, mortgage, or other lien upon said land, and in the event lessee does so, it shall be subrogated to such lien with the right to enforce same and apply rentals and royalties hereunder towards satisfying same.

A similar provision was construed to preclude a covenant against encumbrances. Thus, in a case from which it cannot be determined clearly whether the contract was for the granting of a lease or the assignment of a lease, the court determined that the grantor had merchantable title despite the presence of a prior mortgage on the leased premises. Such determination turned on the presence of a subrogation clause in the lease. Crum v. Guffey-Gillespie Oil Co., 117 Kan. 54, 230 P.299, (1924).

Therefore, the subrogation clause authorizes the lessee, for his protection, to discharge any liens on the leased premises, and be subrogated to the rights of the owner of the lien, and also to apply rentals and royalties accruing under the provisions of the lease to satisfy the indebtedness. This is a simple contractual obligation and is enforceable. The ordinary principles of subrogation would apply. In Coffman v. Branner, 50 S.W.2d 913 (Tex. Civ. App. 1932) , the court held that it is the general rule that where a person having an interest in property is forced to discharge a prior lien in order to protect his own interests, he is entitled in equity to be subrogated to all the rights of the senior lienor he has discharged.

One acquiring an oil and gas lease must determine that former security instruments are either barred of record or by an applicable statute of limitations. Where land is acquired

subject to an existing lien, care must be taken to see that no extensions of the indebtedness have been made by the persons primarily liable for the debt, as such extensions may be binding during the extension period as to all property subject to the lien, whether or not the owner of such property has joined in the extension. Special care must be taken with federal tax liens which may be extended beyond the six-year limitation period without the extension being recorded. In these cases a release will be required.

FORECLOSURE

What are the rights of purchasers at foreclosure as against mineral owners? The most accurate answer is that the purchaser's rights rank according to the time of their creation, under the equitable principle that the first in time is the first in right. In Gulf Refining Co. v. Harrison 201 Miss. 294, 30 So. 2d. 44, sugg. of error overruled 201 Miss. 294, 30 So. 2d 807 (1947), the court held that where a deed of trust was not filed for record until two days after a mineral conveyance was made, but the deed of trust was filed for record two days prior to the tiling of the mineral conveyance, the deed of trust had priority over the mineral conveyance. Section 89-5-1 of the Mississippi Code Annotated states that "... the priority of time of filing shall determine the priority of all conveyances of the same land as between the several holders of such conveyances ... . " (See also, § 89-5-5).

Mineral rights reserved or conveyed before the creation of a lien on land remain free and clear of the lien. In the event of

foreclosure, such prior mineral interests are not affected. Noble v. Kahn, 206 Oki. 13, 240 P.2d 757 (1952); Hester v. Watts, 203 Oki. 97, 218 P.2d 641 (1950).

Where a landowner holding the full title free of any lien conveys the land reserving a fraction of the minerals, and in the same deed retains legal title as a vendor's lien to secure the payment of the purchase price, the reserved mineral estate does not merge with the retained vendor's lien, which is reserved only against the land conveyed. The court in Humphreys - Mexia Co. v. Gammon, 113 Tex. 247, 254 S.W.296 (1923), stated that the mineral estate so reserved was a fee simple estate as was the vendor's lien retained by the grantor and thus incapable of merger. The court held that a transfer of the vendor's lien on "said land" referred only to the land and estate conveyed and not to the reserved minerals.

In Kendrick v. White, 254 S.W.2d 168, (Tex. Civ. App. 1952) error ref'd, a landowner conveyed his land reserving one-half of the minerals and a vendor's lien. He then assigned the vendor's lien to a third person who took a renewed deed of trust from the purchaser on the "same land described" in the deed from the landowner. The court held that this recital kept the deed of trust from applying to the undivided one-half mineral estate reserved to the landowner although he had executed an instrument subordinating his reserved minerals to the deed of trust lien.

By far the greater number of mortgages are executed before any oil and gas lease is executed or any other mineral interest is reserved or conveyed. Within the meaning of a contract of

sale, the title is not marketable unless the contract refers to the existing mortgage. The lien remains superior to any subsequently conveyed interest in the land. Vendor's liens are distinct from and have a higher order of rights attached to them than do deeds of trust or other liens.

When a vendor's lien is reserved, the superior title remains in the grantor until the purchase price of the land is paid, and, in the event of default, he may rescind the sale and assert his superior title to the land. This recession may be accomplished in two ways:

(1) By a conveyance by the last grantee of the land to the holder of the superior title in cancellation of the vendor's lien.
(2) By a suit asserting superior title to the land.

A deed of trust may be enforced through a sale by the trustee under the terms of the instrument or by a foreclosure suit. Such a sale by the trustee under the power of the deed of trust passes the entire title to the purchaser; rights of all lien holders and grantees subsequent to the creation of the foreclosed lien are cut off.

An oil and gas lease terminates by foreclosure of a prior mortgage on the land, just as a mineral grantee may be defeated if he fails to redeem from a foreclosure sale of a prior mortgage on the land. Fairchilds v. Minnescah Oil and Gas Co., 151 Kan. 551, 99 P.2d 839 (1940). But if he is not made a party defendant to the foreclosure suit, his mineral deed having been recorded, his interest is not terminated. Sautbine v. Keller, 423 P.2d 447 (Okl. 1966). Also, he still has a reasonable time, depending

upon circumstances, in which to redeem after the mortgagee receives his deed as the result of the foreclosure sale.

A foreclosure decree in excess of the court's jurisdiction is necessarily void. This is so even against a bona fide purchaser from the judgement creditor who purchases at a foreclosure sale which purports to cover all the mineral rights, although the mortgage itself is only on the land and some of the mineral interest.

A foreclosure of a prior mortgage on the land raises the question whether the oil and gas lessee can have the benefit of the equitable doctrine of marshaling of assets, and if so, whether he can insist on the application of the sale being made in the inverse order of alienation. (See Subrogation, supra.)

In Oklahoma, the Supreme Court has held in several cases that where a landowner transfers a mineral interest in land, subject to a prior mortgage, and the mortgage is foreclosed and the original owner subsequently reacquires title to the land, after foreclosure of the mortgage, by deed from the purchaser at foreclosure, the after acquired title to the mineral interest passes to the mineral grantee. Hanlon v. McLain, 206 Okl. 227, 242 P.2d 732 (1952); Bliss v. Wilcox Oil Co., 206 Okl. 232, 242 P.2d 739 (1952); Triangle Royalty Corp, v. Graves, 206 Okl. 409, 242 P.2d 740 (1952); Equitable Royalty Corp, v. Hullet, 206 Okl. 233, 243 P.2d 986 (1952). The opposite holding was announced in Kansas in Schultz v. Cities Service Oil Co. , 194 Kan. 148, 86 P.2d 533 (1939) and in Montana in Rowell v. Rowell, 119 Mont. 201, 174 P.2d 223 (1946). In these latter two cases, however,

the rule announced was limited to title acquired from the purchaser at foreclosure.

In Mississippi, the court held that it makes no difference, in respect to the application of the after-acquired title rule, how the grantor acquires his belated title, and an after-acquired title through an outstanding mortgage or other lien accrues, in a proper case, to the grantee. Garner v. Garner, 117 Miss. 694 , 76 So. 623 (1918).

STATUTES OF LIMITATIONS

The defense most commonly asserted against a foreclosure is that the debt has become barred by the statute of limitations. A usual situation is that the time of payment of the debt has been extended. The original debtor may execute a renewal note and thereby bind the interest of subsequent purchasers who do not join in the renewal. In like manner a renewal by a new owner who assumed or took subject to the lien keeps the prior lien alive in favor of the holder, even against intervening purchasers of mineral interests. Texas Land and Mortage Co. v. Cohen , 138 Tex. 464, 159 S.W.2d 859 (1942); Texas Osage Co-Operative Royalty Pool v. Crighton, 188 S.W.2d 230 (Tex. Civ App. 1945), error rej'd want of merit. But after the lien has become barred by limitations, the landowner cannot renew the indebtedness against subsequent or intermediate purchasers of part of the title who do not join in the extension. A mortgagee who lawfully takes possession of the land on which the lien exists may continue to retain possession until the debt is paid, although the debt and

the right to foreclose later become barred by the statute of limitations.

FROM THE SEABED
TO THE REFINERY:
THE LEGAL REGIME
OF OFFSHORE OIL AND GAS DEVELOPMENT

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I. INTRODUCTION

The United States has approximately 100,000 miles of coastline along the Atlantic and Pacific Oceans, the Gulf of Mexico and the Great Lakes. The vast array of prime real estate that extends inland provides food, minerals and a priceless supply of recreational area and aesthetic beauty.[2] In recent years the offshore domain has become an important source of domestic crude oil. The United States Geological Survey has estimated that 292,000,000 barrels of oil were produced from federal offshore leases in 1978 and by 1990 production will be in the range of 580-600 million barrels.[3]

Production of oil in the coastal zone began in California in the late 1890's.[4] In the 1920's Georgia, Texas and Louisiana passed legislation allowing them to lease their offshore lands for oil production. In 1945 the United States Government asserted control over the national resources of the subsoil and seabed of all waters of the United States via the Truman Presidential Proclamation.[5] In 1947 and again in 1950, the United States Supreme Court ruled that the federal government, rather than the states, had control over offshore submerged lands.[6]

Consequently offshore oil and gas exploration came to a standstill from 1950-53. Leases of offshore submerged lands issued by states were invalid and there was no federal leasing program or body of law to apply to the submerged lands. Then in 1953 Congress passed the Submerged Lands Act,[7] which gave states ownership of the submerged lands within

three miles of their coastline.[8] Congress, however, retained control over the outer continental shelf (OCS) beyond the three mile boundary.[9] At the same time, Congress passed the Outer Continental Shelf Lands Act (OCSLA)[10] a federal leasing program and a body of law which governs oil and gas exploration on the outer continental shelf.[11]

The federal government began leasing OCS tracts in 1954.[12] At first confined to the Gulf of Mexico and limited areas off California and Washington, development of the outer continental shelf has expanded to the rest of the coastal area.[13] Since 1954 the Outer Continental Shelf Lands Act has been amended and new acts have been enacted which give various duties concerning activities on the outer continental shelf to an assortment of government agencies.

This paper will focus on the procedures which must be followed in developing the OCS and will explain the duties and authority of the numerous agencies and laws involved in offshore development.

II. PRELEASE EXPLORATION

Before a party may explore for oil or gas on the outer continental shelf (OCS) it must first obtain a permit from the Director of the Minerals Management Service (MMS) of the Department of Interior, unless such activities are being carried out pursuant to an issued lease.[14] Separate permits must be obtained for geological research and for geographic research which involves the use of solid or liquid explosives or the drilling of a deep stratigraphic test well.[15] No permit is required for scientific research using neither explosives nor deep drilling.

A permit does not confer a right to any discovered oil, gas or other minerals, nor does it guarantee a lease to the permittee under the OCSLA.[16] Each application for a permit shall conform to the MMS Director's specifications and shall include :

> 1) The name of the person conducting the activity; 2) the names of all persons participating in the activity; 3) the type of activity and the manner in which it will be conducted; 4) the locations on the outer continental shelf where the activity will be located; 5) the purpose of the exploration or research activity; 6) the approximate commencement and completion dates of the activity; and 7) whatever other information the Director of the MMS may require in the particular situation.[17]

The potential permittee shall also submit a standardized notice form along with the permit application.[18] These notices must be signed and state:

> 1) The name of the person conducting the activity; 2) the type of research and procedure to be inplemented; 3) the location of the proposed

> activity, designated on a map, plat, or chart; 4) the commencement and completion dates, not to exceed one year; 5) the proposed time and manner in which the information, resulting from the research, will be made available to the public for inspection; 6) an agreement that the information and data resulting from the research will not be sold or withheld for exclusive use; and 7) the name, registry number, registered owner, and p9rt of registry of vessels used in the operation.

Regulations specify that geological or geophysical mineral exploration or scientific research shall be conducted so that said activities do not: 1) interfere with or endanger operations under any lease issued or maintained pursuant to the Outer Continental Shelf Lands Act; 2) cause harm or damage to aquatic life; 3) cause pollution; 4) create hazardous or unsafe conditions; 5) unreasonably interfere with or harm other uses of the area; or 6) disturb cultural resources.[20] Any person conducting geological or geophysical activities for mineral exploration or scientific research shall immediately report to the Director of the MMS when these activities: 1) detect hydrocarbon occurrences; 2) encounter environmental hazards which constitute an imminent threat to human activity ; or 3) adversely effect the environment, aquatic life, cultural resources, or other uses of the area in which the activity is conducted.[21] The Director of the MMS also requires that permittees use the best available and safest technology that is economically feasible.[22]

Those requesting a permit are usually data collection firms that provide the information thus obtained to the government and industry, for a price.[23] The firms provide

industry with the information necessary to determine whether the tract is worthwhile for development. The Department of Interior uses the information for identification of a general sale area, tract selection, resource evaluation and post-sale management.[24]

Each area of the OCS is required to set up an account under the Fisherman's Contingency Fund. Each holder of a permit for exploration activities in the area covered by the account shall pay an amount specified by the Secretary of Commerce for the establishment and maintenance of the account for that area.[25]

In many instances it may be necessary to drill into the ocean bed in order to obtain the desired information. Before any shallow test drilling is commenced the Director of the MMS may require permits or recommend the gathering and submission of geophysical information and data sufficient to determine shallow structural detail across and in the vicinity of the proposed test.[26]

The permit for a deep stratigraphic test is[27] complicated and voluminous.[28] Before anyone can conduct deep stratigraphic test drilling activities on the OCS they must submit an application to and receive a permit from the Director of the MMS.[29] The application for a drilling plan must include:

1. The proposed type and sequence of drilling activities to be undertaken together with a timetable for their performance from commencement to completion .
2. A description of the drilling rig proposed for use, unless a description has been previously

submitted to the Director of the MMS, indicating the important features thereof, with special attention to safety features and pollution prevention and control features, including oil spill containment and cleanup plans and onshore disposal procedure.

3. The location of each deep stratigraphic test to be conducted, including the surface and projected bottomhole location of the borehole.
4. The types of geophysical instrumentation to be used.
5. Geophysical information and data sufficient to determine shallow structural detail across and in the vicinity of the proposed test, and other information and data from,, but not limited to, seismic, bathymetric, sidescan sonar, and magnetometer systems, collected across any proposed drilling location, and other geophysical data from the area of the proposed test location, and processed geophysical information and interpreted geophysical information therefrom, so as to allow evaluation of structural detail to the total depth of the proposed test.
6. Such other relevant information ag$ data as the Director of the MMS may require.

An environmental report must be submitted with the drilling plan. The applicant shall refer to information and data contained in the related plan, other environmental reports, and other environmental analyses and impact statements prepared for the geographic area by identifying the information and indicating a source for obtaining copies of the cited materials.[31] The applicant must also consider information or data which is site-specific or which is developed subsequent to the most recent Environmental Impact Statement (EIS) or[32] other environmental analyses in the immediate area.[33] The application for the environmental report shall include the following:

1. A list and description of new or unusual technologies that are to be used, the location of travel routes for supplies and personnel, the kinds and approximate quantities of energy to be

used; the environmental monitoring systems that are to be used; and suitable maps and diagrams showing details of the proposed project layout.

2. A narrative description of the existing environment. This section shall include the following information on the area: (i) geology, (ii) physical oceanography; (iii) other uses of the area; (iv) flora and fauna; (v) existing environmental monitoring systems; and (vi) other unusual or unique characteristics which may affect or be affected by the drilling activities.
3. A narrative description of the probable impact of the proposed action on the environment and the measure proposed for mitigating these impacts.
4. A narrative description of any unavoidable or irreversible adverse effects on the environment that could be expected to occur as a result of the proposed action.
5. Such other relevant information as the Director of the MMS may require.

When required under a coastal zone management program approved under the Coastal Zone Management Act (CZMA),[35] the activities proposed by an applicant for a permit to conduct geological or geophysical exploration for minerals or for geological or geophysical scientific research must receive state concurrence in its CZMA consistency certification prior to the MMS Director's approval of any of the activities covered under the permit.[36] A permittee authorized to drill a deep stratigraphic test shall also, if requested by the Director of the MMS, conduct studies to determine whether any cultural resources exist in the area that may be affected by the drilling, and shall report the findings of those studies to the Director.[37] A permittee authorized to perform shallow test drilling may be required to conduct similar studies if required by the Director.[38] The study shall include a full description of any cultural resources detected.[39] The permittee shall take no action

that will result in the disturbance of cultural resources without the prior approval of the Director, and if any cultural resource is discovered after submission of the study (i.e. during site preparation or drilling), the permittee shall immediately report the discovery to the Director and make every reasonable effort to protect the cultural resource from damage until the Director has given directions as to its preservation.[40]

The MMS has provided for group participation in test drilling activities in order to minimize duplication of the exploration efforts.[41] To allow for group participation in shallow or deep test drilling activities, the applicant shall:

1. Publish a summary statement describing the proposed activity, in a manner approved or prescribed by the MMS Director;
2. forward a copy of the published statement to the Director;
3 allow at least 30 days from the date of publishing the summary statement for other persons to join as original participants;
4. compute the estimated costs to an original participant by dividing the estimated total cost of the program by the member of original participants; and
5. furnish the Director with a complete list of all participants under the permit prior to commencing operations, or at the end of the advertising period of operations begun prior to its close. The names of all latepparticipants shall be forwarded to the Director.

Prior to the issuance of a permit to drill a deep stratigraphic test the applicant must furnish the Bureau of Land Management with a corporate surety bond of not less than $50,000 conditioned on compliance with the terms of the permit. However, this requirement may be waived if the

applicant furnishes the Bureau of Land Management with a bond in the sum of $300,000. The $300,000 bond serves to guarantee compliance with the terms of the permit for an entire area of the OCS regardless of the number of wells drilled.[43]

Each permittee is required to submit status reports on a weekly basis, including a daily log of operations, in a manner prescribed by the Director of the MMS.[44] After the completion of operations the permittee shall submit to the MMS a final report of exploration activities under the permit within 30 days after the completion of operations.[45] This final report shall contain: 1) A description of the work performed; 2) a specific geographic depiction of where activity was performed; 3) the days when the actual exploration and research occurred; 4) a narrative summary of any: (i) hydrocarbon occurrences or environmental hazards, and (ii) adverse effects of the exploration activities on the environment.[46]

III. PROCEDURE FOR SELECTION AND SALE OF INDIVIDUAL LEASE TRACTS

The purpose of the Outer Continental Shelf Lands Act is to regulate the granting of mineral leases on the OCS.[47] This Act authorizes the Secretary of the Interior to administer the OCS leasing process.[48]

The leasing process commences with the Pre-Call Activities when the MMS Office of Offshore Leasing receives a geology report from the U.S. Geological Survey.[49] The geology report will cover the entire planning area for the proposed sale and will contain: 1) An estimate of recoverable oil and gas in the planning area; 2) the location of areas of hydrocarbon potential; and 3) the environmental geology of the sea including a regional characterization of potential geological hazards.[50] Subsequently, the MMS Office of Offshore Leasing will receive, from the MMS Office of Offshore Operations, an environmental report which will include the types of activity that should occur as a result of the sale and the magnitude and timing of the activities.[51] The Office of Offshore Leasing will try to coordinate these reports with other federal agencies, state and local governments and others to discuss the proposed lease and to determine the extent of the lease sale EIS.[52]

The next step will be to publish a Call for Information in the Federal Register which will contain a description of

the proposed tract.[53] At this point oil and gas companies will be able to express any interest they may have. Also[54] federal agencies, state and local governments and others may provide valuable suggestions and identify any conflicts.[55] Following this step the MMS Office of Offshore Leasing will publish a formal announcement identifying the area that will be considered for leasing and upon which the lease sale EIS will focus.5$

An EIS will then be prepared for the proposed area and subsequent EIS's will be prepared as required, each being cumulative improvements upon its predecessors.[57] Through these initial steps the procedure will produce deletions of some tracts while providing certain stipulations for proposed tracts through the draft EIS (DEIS).58

Within 45 days after the release of the DEIS, the MMS Office of Offshore Leasing will conduct at least one public hearing on the proposed sale.[59] Comments at these hearings will be evaluated and used to update the final EIS (FEIS) which is filed with the EPA.[60] Simultaneously the MMS office of Offshore Leasing will prepare a Secretarial Issue Document (SID) in which the Secretary of the Interior will select the tracts for leasing.[61]

The Governor of each affected state will have 60 days to comment on the size, timing and location of the proposed sale.[62] The Governor may recommend deletions upon evaluating the FEIS as compared to his state's coastal zone management program.[63] After reviewing these comments, the

Secretary of the Interior will publish a Final Notice of Sale in the Federal Register.[64] This notice will identify the tracts to be offered in the sale, any stipulations that may be required for these tracts, and the bidding system(s) that will be used.[65]

IV. BIDDING PROCEDURES

The OCSLA of 1953 authorized cash bonus or royalty bidding only. However, the 1978 amendments to the OCSLA provides that the bidding may be based on a number of bid variables such as: 1) cash bonus; 2) royalty; 3) net profit share; or 4) work commitment. [66] Each of these variables is to be combined with one or two of five fixed factors which are: 1) A fixed royalty payment of at least 12 1/2 percent of the oil or gas produced, or its value; 2) a sliding scale royalty of at least 12 1/2 percent; 3) a fixed net profit share of at least 30 percent; 4) a specified work commitment based on a dollar amount for exploration; or 5) a fixed cash bonus.[67] The Department of the Interior has the sole authority to delegate which of these bidding systems will be implemented for the proposed lease tract.

A single bid or joint bids may be submitted for any selected tract. However, before a joint bid will be accepted a company must have filed a "Statement of Production" no later than 45 days prior to the six-month bidding period.[68] The "Statement of Production" must indicate whether the company was chargeable with an average daily production in excess of 1.6 million barrels of crude oil or the equivalent in natural gas and liquified petroleum products during the prior six-month period.[69] This information will be used by the MMS to develop and publish, no less than semi-annually, in the Federal Register, a list of restricted joint bidders

which will disqualify any company on the list from partaking in a joint bid. [70]

Only separate, sealed bids for an entire tract will be accepted and must be accompanied by:

1. A certified or cashier's check or bank draft on a solvent bank, or cash, or any other form of payment approved by the Secretary of Interior for 1/5 of the amount of the cash bonus, unless otherwise stated in the Final Notice of Sale;
2. a certified copy of the company's Articles of Incorporation and a copy of either the minutes of the board of directors or the bylaws indicating that the person signing the bid has the authority to do so; or, in lieu of a copy of the minutes or bylaws, a certification signed by the secretary of the corporation over the corporate seal, including same; or an appropriate reference to the MMS indicating when such articles and authority have been previously submitted; and,
3. for joint bids, a sworn statement that no bidder is on the list of restricted joint bidders.

V. ACCEPTANCE OF BID AND SALE

The sealed bids will be opened at the place, date, and hour specified in the Final Notice of Sale.[72] After the public reading, the bids and bonus payments accompanying the bids are checked for technical and legal adequacy.[73] If there is a tie among the highest bids the bidders may accept the lease jointly; however, if they fail to do so within 15 days all such bids will be rejected.[74] Even the highest bids may be rejected if the Department of the Interior declares the bid to be inadequate.[75] The successful bidder must, within 15 days notice, pay the first year's rent and the balance of the bonus bid (unless deferred), and file a bond.[76] Deposits and any interest due shall be refunded on rejected bids.[77]

At this stage the lease contract is issued, which grants to the lessee the right to conduct necessary operations to drill and produce oil and gas from the leased tract.[78] A typical lease contract:

1) Usually covers an area of 5760 acres or less;
2) generally terminates after five years, or may be extended for as long as the well is producing;
3) reserves to the government the right to grant leases for other mineral exploration, approve pipeline and other rights-of-way across the leases, take its royalty on production in the form of oil and/or gas, extract helium from producing gas, and suspend operations and production;
4) spells out requirements for surety bonding, royalty, rental payments, and assignment of rights ;
5) may require the use of improved equipment to be used as it is developed;
6) may include stipulations such as a:
   a) requirement that a cultural resource survey or a biological survey be conducted;

b) requirement that the lessee prepare an environmental training program or a fisheries training program for employees that will be conducting operations;
c) requirement for burial of certain pipelines;
d) requirement that subsea well heads and temporary abandonments be protected to allow commercial trawling gear to pass over the structure without damaging the structure or the fishing gear.

VI. EXPLORATION SUBSEQUENT TO LEASE

Before any lessee can conduct exploration activities on the OCS they must file an exploration plan which must be approved by the Director of the MMS. (There may be some overlap between these plans and pre-lease exploration permits but for purposes of clarity the entire post-lease exploration plan will be described.) An exploration plan shall include:

1) The proposed type and sequence of exploration activities to be undertaken together with a tentative timetable for performance from commencement to completion;
2) a description of any drilling platform vessel, or other installation or device to be permanently or temporarily attached to the seabed indicating the important features thereof with special attention to safety features and pollution prevention and control features including oil spill containment and cleanup plans;
3) the types of geophysical equipment to be utilized;
4) the approximate location of each proposed exploratory well, including surface and projected bottom hole locations;
5) current structure maps and, where appropriate, schematic cross sections showing expected depths of marker (or reference) formations; and,
6) such other relevant information ggd data as the Director of the NMS may require.

To accompany the exploration plan the lessee is required to submit an Enviromental Report (Exploration) unless the lease is located in the western Gulf of Mexico in which case the Director will require an Enviromental Report only if the proposed activity would affect a land use or water use in violation of a state's coastal zone program. 81 The lessee shall indicate which portions of the exploration plan the lessee believes are exempt from the Freedom of

Information Act and the implementing regulations.[82] Then the Director of the MMS reviews, processes and distributes the plan according to regulations with special attention given to any possible conflict of the proposed plan with the affected state's coastal zone management program.[83]

Within 30 days of submission of a proposed exploration plan, the Director shall: 1) approve the plan; 2) require modifications; or 3) disapprove any plan if it is determined that a proposed activity under the plan would probably cause serious harm or damage to the marine, coastal, or human environment.[84] Upon rejection of the proposed plan, the Director of the MMS shall notify the lessee of the reasons and the lessee may submit a modified proposal.[85] If the proposed plan is adjudged by the Governor of an affected state to be inconsistent with the state's coastal zone management program the lessee may modify the proposal or appeal the state's objection to the Secretary of Commerce.[86] The Director of the MMS, upon rejection of the proposed exploration plan may cancel the lease if the conflicts appear irreparable.[87] Any proposed revision to the exploration plan must be approved by the Director of the MMS and may likely require additional permits.[88]

The exploration plan must be accompanied by an up-to-date Hydrogen Sulfide (H_2S) Contingency Plan and a current Critical Operations and Curtailment Plan.[89] The following information is to be included in the H_2S Contingency Plan:

1) General information on and physiological response to H_2S gas;
2) safety procedures, equipment, training, and smoking rules;
3) procedures for operating conditions in case of:
   a) Moderate danger to life; and
   b) extreme danger to life;
4) responsibilities and duties of personnel for each operating condition;
5) designation of briefing areas as locations for assembly of personnel during extreme danger conditions. At least two briefing areas must be established on each drilling facility. Of these two areas, the one upwind at any given time is the safe briefing area;
6) evacuation plan;
7) agencies to be notified in case of an emergency; and
8) a list of medical personnel and facilitiesso including addresses and telephone numbers.

The Critical Operations and Curtailment Plan must: 1) identify operations which are critical to well control and the prevention of fire, explosions, and oil spills; and, 2) indicate the circumstances and conditions under which critical operations would be ceased or limited.[91]

Also required with the exploration plan is an oil spill contingency plan which must contain:

1) A provision to assure that full resource capability is known and can be committed during an oil spill, including the identification and inventory of applicable equipment, materials and supplies which are available locally and regionally, both committed and uncommitted, and the time required for deployment of the equipment;
2) a provision for varying degrees of response effort depending on the severity of the oil spill;
3) provisions for identifying and protecting areas of special biological sensitivity;
4) an establishment of procedures for the purpose of early detection and timely notification of an oil spill including a current list of names, telephone numbers, and addresses of the responsible person and alternates on call to receive notification of an oil spill, and the names, telephone numbers, and addresses of regulatory agencies when an oil spill is discovered;

5) provisions for well-defined and specific actions to take after discovery and notification of an oil spill, including:
   a) Specification of an oil spill response operating team consisting of trained, prepared and available operating personnel;
   b) predesignation of an oil spill response coordinator who is charged with the responsibility of and is delegated commensurate authority for directing and coordinating response operations;
   c) a preplanned location for an oil spill response operations center and a reliable communications system for directing the coordinated overall response operations; and
   d) provisions for disposal of recovered spill materials.

If an environmental report is required it shall include a brief description of:

1) The procedures, personnel and equipment that are to be used for preventing, reporting and cleaning up oil spills or any emission of waste material, including information on response time, capacity and location of equipment and sites and methods of disposal;
2) the location, size, number and land requirements of onshore support and storage facilities;
3) the estimated number of persons to be employed in support of offshore, onshore and transportation activities, and where possible, the approximate number of new employees and families likely to move into the affected area;
4) the most likely travel routes for boat and aircraft traffic between offshore and onshore facilities, the probable location of onshore terminals, and the estimated frequency such routes will be traveled;
5) the quantity and composition of solid and liquid wastes and pollutants likely to be generated by offshore, onshore and transport operations;
6) major supplies, services, energy, water or other resources within affected states necessary for carrying out the proposed plan;
7) environmentally sensitive or potentially hazardous areas, including:
   a) Site specific geology, e.g. bathymetry, seismicity, extent and type of bottom sediments, and geologic features which pose a potential hazard to the activities proposed;
   b) historic weather patterns and other meteorological conditions including storm

frequency and magnitude, wind direction and velocity, of offshore areas;

c) physical oceanography including onsite direction and velocity of currents;

d) onsite flora and fauna including bottom communities, where present, transitory birds and mammals that may be in the area when proposed activities are being conducted, identification of endangered species and their habitats that could be affected by proposed activities, and typical fishing seasons of the area;

e) environmentally sensitive areas (onshore as well as offshore), e.g., refuges, preserves, sanctuaries, rookeries, calving grounds, and areas of particular concern identified by an affected state pursuant to the Coastal Zone Management Act which may be affected by the proposed activities;

f) onsite uses of the area, e.g., shipping, military use, recreation, boating and commercial fishing;

g) archeological and cultural resources located within the area that may be disturbed by the proposed activities; and,

h) existing and planned monitoring systems that are measuring or will measure environmental conditions and provide information and data on the impacts ofactivities in the geographic area.

For both onshore and offshore facilities the lessee must submit information on each source of air pollutants, listing the source, the location of the source, the chemical composition and quantity of the air pollutants, and the frequency and duration of such emission.[94]

VII. DEVELOPMENT AND PRODUCTION

Once exploration efforts discover oil or gas reserves the lessee must still obtain the necessary permits before commencing development drilling and platform operations. The development and production plan applications are almost identical to the exploration plan[95] with a bit more detail and specificity.[96] Prior to platform construction, the lessee must submit a design documentation, a design verification plan (at the design stage), fabrication verification plan (at the fabrication stage), installation verification (at the installation stage), and a separate application for permit to drill (APD).[97]

The design documentation must include:

1) The location and intended use of the platform;
2) a description of all facilities on or associated with the platform;
3) details on corrosion protection and durability;
4) environmental factors that have a bearing on the design, installation, and operation of the platform;
5) geological information relevant to the foundation of the platform (soil stability, faults, etc.); and,
6) design and structuralgcriteria, material specifications, etc.'

The design verification plan, fabrication verification plan, and installation verification plan must include:

1) The identity of a certified verification agent (a CVA is a private platform engineering consultant, approved by MMS, who verifies conformance of platform design to MMS standards);
2) the qualifications of the CVA;
3) a description of what the CVA will do;
4) an identification of the level of work to be performed by the CVA;
5) an identification of the documents which will be furnished to the CVA; and,

6) detailed structural plans and specifications for the platform certified by a registered professional structural or civil engineer specializing in structural design.

For each well being drilled from the platform, a separate application for permit to drill must be submitted and include:

1) The surface location and projected bottom hole location of the well, in feet, from the lease boundaries ;
2) the elevation of the derrick floor;
3) the water depth;
4) the estimated depth to which the well will be drilled;
5) the estimated depths to the top of significant marker formations;
6) the estimated depths at which encounters with water, oil, gas, and mineral deposits are expected;
7) the proposed blowout prevention and casing programs including the size, weight, grade and setting depth of casing and the pressure rating of blowout prevention equipment;
8) the estimated quantity of cement that will be used;
9) plans for drilling other wells from the same platform;
10) plans for casing at specified depths;
11) plans for electrical and other logging operations; and,
12) such other relevant information as the MMS Director may require.

At least two copies of the application shall be submitted accompanied by a certified plat, drawn to a scale of 2,000 feet to the inch, showing the surface and subsurface location of the wells(s) to be drilled and all the wells previously drilled in the vicinity for which information is available. 101

The lessee must also mark each drilling platform or structure. 102 These markings must include the name of the lessee or operator, the name of the area, the block number,

and the platform or structure designation.[103] Letters and figures not less than twelve inches in height are to be used and the markings are to be placed on the diagonal corners of the platform or structure and the lessee must preserve these markings in good repair.[104] Also each well must be clearly identified by a sign containing the well number and the OCS lease number.[105]

All requirements of the National Enviromental Policy Act (NEPA) must be compiled with prior to the approval of an exploration or development and production plan.[106] Most of these requirements will already have been satisfied through the environmental plan, however, upon review by the Directors of the MMS and Enviromental Protection Agency additional information from the lessee may be required.[107]

VIII. TRANSPORTATION OF THE PRODUCT

Transportation of the oil from the well to the refinery may be done by barges or tankers, but pipelines transport most of the produced crude.[108] Before a pipeline may be used the MMS requires approval of: 1) right of use and easement; and 2) grant of right of way.[109] The right of use and easement permit application must be made pursuant to the OCSLA and include the following:[110]

1) A safety schematic indicating:
   a) source and maximum source pressure;
   b) related safety equipment as specified by OCS Orders Nos. 5 and 9;
   c) rated working pressure of all valves, flanges, and fittings associated with the pipeline; and,
   d) receiving facility and working pressure rating (designation of pipeline).
2) Location Plat (8 1/2" X 11" sheet) indicating:
   a) Location of pipeline (block and lease no.);
   b) length of pipeline;
   c) size of pipeline;
   d) type of service;
   e) direction of flow; and
   f) X and Y coordinates of key points (future tie-in points, subsea tie-ins, origin and termination of radius, etc.).
3) General information including:
   a) size of pipeline, grade, weight per foot, wall thickness, type of pipe (APRSL, ASTM A-106, etc.) and specific gravity;
   b) hydrostatic test pressure and hold time;
   c) cathodic protection (type anode, spacing interval, number of anodes weight of unit anode);
   d) description of pipeline and riser coatings;
   e) if concrete coated, a description of preconcrete coating, density of concrete, thickness of concrete and thickness of asphalmastic/somastic;
   f) gravity or density of products;
   g) water depth;
   h) burial depth;
   i) anticipated operating procedure;

j) anticipated capacity and maximum capacity; and
k) company contact and telephone number.

4) Should flexible pipe or hot tap procedures be utilized, the following information should be submitted:
   a) manufacturer/contractor;
   b) design specifications; and,
   c) procedure of installation.

5) In addition, should the proposed pipeline cross another pipeline, a profile and drawing should be submitted indicating:
   a) the 18 inch minimum clearance between pipelines ;
   b) slope of the sandbags; and
   c) minimum coyyy for the pipeline at the crossing.

There is no application fee for the right of use or easement permit.[4-4.112]

Before a right of way will be granted to the lessee the MMS requires the submission of a hazards survey report,[113] archeological survey report, certificate of[114] qualifications and a right of way permit application.[115][116]

The right of way application must contain:

1) A coastal zone management consistency certification ;
2) a statement that a copy of the application has been delivered personally or by registered or certified mail to each lessee, right of way, or easement holder whose lease, right of way, or easement may be affected;
3) if the proposed right of way will cross state lands, evidence that the affected state has reviewed the application; and,
4) three copies of a "Nondiscrimination in Employment" statement.

A nonrefundable filing fee of $100.00 and the advanced rental of $15.00 for each statute mile or fraction thereof traversed by the right of way must accompany the application.[118]

IX. LAWS AFFECTING PCS ACTIVITY

To say that there are many federal laws, programs, rules, policies and regulations which affect oil and gas development in coastal waters would be a gross understatement. Each step of the development stage is regulated by various acts and agencies. Some of these acts and agencies apply to a single stage while others have a binding effect throughout the entire process. While an exhaustive discussion of all such interests is beyond the scope of this paper, a brief explanation of some of them is necessary for a clear understanding of oil and gas development in coastal waters.

The Clean Air Act[119] established a national program of air quality research, maintenance and improvement. The Environmental Protection Agency established standards which the states administer. These standards are required by the CZMA to be the air quality standards for a state coastal management program.[120]

The Coastal Zone Management Act[121] requires a lessee's exploration and development/production plans to include a certification that the proposed activities comply with any applicable state management program developed under the CZMA.[122]

The Deepwater Port Act of 1974[123] establishes authority over the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial boundary of the U.S.

The Department of Energy Organization Act sets forth[124] Congressional finding of the need to further develop our own natural resources due to the increased dependance on foreign energy supplies.

The Endangered Species Act of 1973 sets up policies[125] and procedures for protecting various species from extinction. The Act strives to protect the species and its habitat and, through the Department of Interior, insures that no actions are authorized which would jeopardize such species.

The Federal Water Pollution Control Act sets forth a[126] water quality level which must be maintained and also regulates any discharge of oil or hazardous substance into or upon the navigable waters of the United States, coastline or contiguous zone.

The Interstate Commerce Act, administered through[127] the Federal Energy Regulatory Commission, requires oil pipeline companies to charge just and reasonable rates, to provide transportation upon reasonable request, to engage in just and reasonable practices and to treat those who use their services without discrimination.[128]

The Intervention on the High Seas Act provides the[129] states with a vehicle, via the Department of Transportation, to remedy a pollution causing concern created by a ship collision, stranding or other accident threatening the coastline.

The Longshoreman's and Harbor Worker's Compensation Act[130] applies to any disability or death of an employee resulting from any injury occuring as the result of operations conducted on the OCS. Compensation shall be payable under the provisions of the Act.

The Marine Mammals Protection Act of 1972,[131] administered by the National Marine Fisheries Service of the Department of Commerce and the U.S. Fish and Wildlife Service of the Department of the Interior, establishes restrictions on OCS leasing and operations in areas where there would be a threat to marine mammal populations.

The Marine Protection, Research and Sanctuaries Act of 1972[132] is the original law which prohibited the unregulated dumping of waste materials into coastal waters and the oceans.

The Marine Resources and Engineering Development Act of 1966[133] established the National Council on Marine Resources and Engineering Development which coordinates federal marine science research and development.

The Military Public Lands Withdrawal Act establishes[134] the overriding authority of the Chief Executive during times of a national emergency. Although this Act is not likely to have a serious impact on OCS development, the potential is always there and should be considered.

The National Environmental Policy Act of 1969 has[135] two significant impacts. First, the NEPA created the EIS process. Secondly, the Act requires that environmental

consequences of OCS development be taken into consideration at all stages.[136]

The National Historic Preservation Act together with[137] the provisions of Section 11(g)(3) of the OCSLA sets a policy that oil and gas activities shall not disturb any site, structure, or object of historical or archeological significance.[138]

The National Labor Relations Act extends its[139] restriction on unfair labor practices to all artificial islands, installations or rigs set up on the ocean floor.

The Outer Continental Shelf Lands Act (OCSLA)[140] establishes federal jurisdiction, control and power over the subsoil and seabed of the OCS. Also this is the Act which delegates power to the Department of the Interior to lease OCS lands. The OCLSA also states that the criminal and state laws of the state directly inshore from the artificial islands apply to all rigs and fixed structures as well as submerged lands of the outer continental shelf.

The Ports and Waterways Safety Act of 1972 delegates[141] authority to the Coast Guard to regulate vessel traffic in coastal waters and to establish regulations for tanker safety.

The Rivers and Harbors Act of 1899 invests the Army[142] Corps of Engineers with the authority to regulate the permitting process for the placement of any structure in navigable waters, including the OCS.

The Water Resources Planning Act of 1965 established the Water Resources Council, composed of the Secretaries of Interior, Agriculture, Army and Health, Education and Welfare and the Chairman of the Federal Power Commission. The Council has the duty to coordinate federal interests with local government and industry concerns in encouraging the conservation, development and utilization of water and related land resources of the United States.

These are acts which have an effect on the development and conservation of resources of the OCS. The limited discussion of each law's impact, as listed above, should be taken as illustrative only of the complexity of the legal regime of OCS development. To adequately appreciate each it is necessary to examine all of the regulations and case law dealing with the interpretation of these acts as well as staying current on all amendments and repeals.

X. AGENCIES AFFECTING PCS ACTIVITY

As may be expected, with an area of law as broad as offshore development, there are many different agencies involved in the various stages. As with the acts listed above, the agencies' impact varies from major importance to slight signifigance.

The Department of Commerce is the federal agency in charge of enforcing the CZMA, Endangered Species Act, Fish and Wildlife Coordination Act, Fishery Conservation Act, Marine Mammal Protection Act, and the National Sea Grant College and Program Act of 1966.[144] The Commerce Department is also the overseer of the Economic Development Administration,[145] the National Oceanic and Atmospheric Administration[146] and the Office of Coastal Zone Management.[147]

The Department of Defense has two major departments which have a direct effect on the OCS. The Department of the Navy conducts extensive research in all aspects of the marine environment, including studies of deep ocean bathymetry, marine mammal behavior, coastal hydrographic surveys and underwater acoustics.[148] The U.S. Army Corps of Engineers, through section 10 of the Rivers and Harbors Act,[149] regulates a permitting process prior to the placement of any structure on the ocean floor.[150]

Under the Department of Energy, the Federal Energy Regulatory Commission has licensing and regulatory authority over natural gas and oil.[151] Also, the Commission

establishes rates for pipeline transportation of oil, an authority previously held by the Interstate Commerce Commission.[152]

The Department of Interior administers the Minerals Management Service, the Fish and Wildlife Service and the U.S. Geological Survey. Until 1982 the Bureau of Land Management administered the leasing program and the Conservation Division of the U.S. Geological Survey administered the regulations controlling post-lease sale operations.[153] Now the Minerals Management Service, consisting of the Conservation Division of the U.S. Geological Survey and the OCS offices of the Bureau of Land Management, controls all the OCS regulatory functions of the Department of Interior.[154] The Fish and Wildlife Service administers the Fish and Wildlife Conservation Act, Anadromous Fish Conservation Act, Endangered Species Act, Wildlife Restoration Act and Marine Mammals Protection Act. The Service also performs marine and environmental studies, federal aid programs for fish and wildlife restoration, management assistance, and fishery research.[155]

The Department of Transportation administers two agencies which have a significant impact on offshore development. First the National Transportation Bureau of the Department of Transportation establishes and enforces design, construction, operation, and maintenance requirements for OCS pipelines.[156] Secondly the Coast Guard sets navigation and safety standards (lighting and warning

devices, safety equipment, and other safety-related devices) for all platforms and drilling vessels on the OCS and conducts inspections to insure compliance with these standards.[157]

XI. CONCLUSION

It is important to this nation's energy situation that we strive to develop all available domestic oil and gas reserves. However, it is equally important that we conserve our fragile ocean and coastal enviroments. Oil spills and subsequent damage to the surrounding waters have prompted numerous legislative acts which are supposedly designed to provide more protection to the enviroment. The situation is improving but before we can consider our offshore waters safe from destruction, more must be done.

Another major area of concern is the almost insurmountable barrier of requirements which one must overcome before attempting to develop an OCS area. It is painfully obvious to one who has attempted to wade through the quagmire of bureaucratic verbiage that simplification is drastically needed. Hence, two problems require a unified solution. This author suggests a legislative proposal which may remedy part of the entangled situation.

The first change would be to delegate federal jurisdiction over pre-lease exploration activities to the states. As it now stands independent companies conduct these exploration activities.!$$ They must first submit voluminous data to obtain permits. Then they conduct exploration activities which are more appropriately performed by oil companies. These independent companies, through permits from the federal government, do this for one reason—monetary gain. Their interest in the environment is at best

secondary. They do this exploration work for the purpose of selling information to interested oil companies; therefore the environment is not of primary concern. Granted they must account for obvious environmental difficulties as these will show up later when DEIS's are prepared but their initial priority conflicts with the purposes of applicable laws and regulations.

My suggestion is to allow the States, through their approved CZMA programs, to conduct these activities. This will benefit all involved:

1. The state will hire competent explorers.
2. These explorers will be instructed to view all potential environmental problems early and submit expectations of reserves.
3. The state can draft an EIS at this genesis stage which will demand strict adherence throughout the entire process.
4. This will also eliminate the need for the submission of all pre-lease exploration permits, etc., to the federal government, which does not have the interest to scrutinize the information as closely as would an affected state.
5. This will eliminate the need to rely on the nebulous "consistency provision" of the CZMA. The effect of California v. Watt (no consistency determination until after lease sale) will be diluted if not totally eliminated.
6. States will be in charge of deciding which areas are worth developing and which are too risky or dangerous to develop.
7. By having the states oversee this initial stage, OCS permitting procedures through the exploration phase should be streamlined.

There are, however, potential drawbacks; namely that states will not allow any development in the adjacent OCS. This problem will not be easy to eliminate. The only suggestion one can make is that federal aid to a state's CZMA program will depend on the volume of work they perform.

But the federal government must make the work more worthy of the effort:

> 1. The federal government should agree to fund up to 75% instead of 40%-50% of this program stage. 2. States will benefit economically from development offshore—income, taxes, employment, housing, overall development. 3. States may take a more optimistic view of offshore development when they are in charge of the tracts to be developed. States, by being in charge of exploration can regulate what can or cannot be done on their OCS and further stipulate what enviromental factors are to be considered in development.

BENEFITS

-State more involved from beginning.

-Streamlined process.

-Less federal paper work and more money available to the states for such a purpose.

-More qualified explorers.

-Environmentally concerned exploration instead of the developmentalist approach now being used.

-Economic awards to states instead of filtration through federal government.

State control over the OCS environment will continue through the entire process. They will have a hand in all stages. They can work closely with developers and all interested agencies. This would, in effect, forewarn all interested developers of the potential conflicts on any given tract. The federal issues on a proposed lease sale would be supplemented by the states' concern from the initial stage of development. This would eliminate any

antagonism with a state, such as that brought up in California v. Watt, because the problems would be resolved step by step with equal input by the states and the federal government.

FOOTNOTES

[1]U.S. Council on Environmental Quality, Environmental Quality 1979 498 (1979) (10th Annual Report).

[2]U.S. Commission of Marine Science, Engineering and Resources, Our Nation and the Sea 49 (1969).

[3]U.S. Dept, of Energy, Federal Leasing and Outer Continental Shelf Energy Production Goals (June 1979) . See also, Edwin I. Malet, "Outer Continental Shelf Oil Pipelines Under the Interstate Commerce Act, 43 La. L. Rev. 1143 (1983) .

[4]Bureaus of Competition and Economics, Report to the Federal Energy Land Policy: Efficiency, Revenue, and Competition 75 (1974) .

[5]59 Stat. 884-85 (1945). See also, Hooks, McCloskey & Associates, Federal and State Regulation of Oil and Gas Exploration and Development Activities on the Outer Continental Shelf (PCS) 9 (1982) .

[6]United States v. California, 332 U.S. 19 (1947); United States v. Louisiana, 339 U.S. 699 (1950).

[7]43 U.S.C. §§ 1301-1315 (1970).

[8]43 U.S.C. § 1312 (1970) .

[9] Id.

[10]43 U.S.C. § 1331-1345 (1976 & Supp. Ill 1979).

[11]Id. at § 1334.

[12]Bureaus of Competition and Economics, supra note 3, at 75.

[13]Id.

[14]30 C.F.R. § 251.4-1 (1982). 30 C.F.R. Part 251 is commonly referred to as the "0 & G" regulation. Id.

[15]Id. at § 251.4-2(a) (1982).

[16]Id. at § 251.3-5(d) (1982).

[17] Id. at § 251.15-1(a) (1982). Filing locations for these permits can be found at 20 C.F.R. § 251.5-3 (1982). For the OCS in the Gulf of Mexico—the Area Oil and Gas Supervisor for Resource Evaluation, Minerals Management

Service, Gulf of Mexico Area, P.O. Box 7944, Metarie, Louisiana 70010. 30 C.F.R. § 251.5-3 (1982).

[18]30 C.F.R. § 251.5-2 (1982).

[19] Id. at § 251.5-2 (1982).

[20]Id. at § 251.3-5(a) (1982).

[21] Id. at § 251.3-5(b) (1982).

[22] Id. at § 251.3-5(c) (1982).

[23]Hooks, McCloskey, supra note 5, at 51.

[24] Id. at 51.

[25] 43 U.S.C § 1842 (1976 & Supp. Ill 1979), 30 C.F.R. § 251.5-5 (1982).

[28]30 C.F.R. § 251.6-1 (1982). Other information and data may include that obtained from, but not limited to, seismic, bathymetric, sidescan sonar, and magnetometer systems, across and in the vicinity of the proposed test. Id.

[27]Hooks and McCloskey, supra note 5, at 57. A deep stratigraphic test is a well involving penetration into the sea bottom of more that 50 feet of consolidated rock or a total of more than 300 feet. Id.

[28]30 C.F.R. § 251.6-2(a) (1982).

[29] Id. at § 250.6-5 (1982). If a deep stratigraphic test well is drilled within 50 geographic miles of any tract within the area identified for consideration for leasing as listed on the currently approved OCS Leasing Schedule, all drilling activities must be completed and the information and data submitted to the Director of the MMS at least 60 days prior to the first day of the month in which the lease sale is scheduled to be held. Id.

[30]ld. Any revisions to an approved drilling plan must be approved by the Director of the MMS. Id. at § 251.6-5 (1982).

[31] Id. at § 251.6-2(b) (1982).

[32]Id. For a detailed explanation of the preparation of an environmental impact statement (EIS), see Hooks and McCloskey, supra note 5, at Appendix 6.

[33] 30 C.F.R. § 251.6-2(b) (1982).

[34] Id. The applicant shall submit a sufficient number of copies of the drilling plan and environmental report to enable the Director of the MMS to transmit copies of each of the governor of each affected state and the coastal zone management agency of each affected state that has a coastal zone management program approved under the Coastal Zone Management Act. The Director of the MMS shall make the drilling plan and accompanying environmental report available to appropriate Federal agencies and the public, in accordance with established Departmental practices and procedures. 30 C.F.R. § 251.6-2 (c) (2) (1982).

[35] 16 U.S.C. §§1451-1464 (1976 & Supp. Ill 1979).

[36] 30 C.F.R. § 251.6-2(c) (1) (1982).

[37] 30 C.F.R. § 251.6-2(e) (1982).

[38] Id.

[39] Id.

[40] Id.

[41] Id. at § 251.6-3(a) (1982).

[42] 30 C.F.R. § 251.6-3 (c) (1982). If the applicant proposes changes to the original application and the MMS Director determines that such changes are significant, the Director shall require a republication of the changes and an additional 30 days for other persons to join as original participants. Id. at § 251.6-3(d) (1982).

[43] Id. at § 251.6-4 (1982). The Director may require the submission of a bond before authorizing the initiation of shallow test drilling. Id.

[44] Id. at § 251.7-2 (1982).

[45] Id. at § 251.7-3 (1982) .

[46] Id.

[47] 43 U.S.C. §§ 1331-1343 (1976 & Supp. Ill 1979).

[48] Linsely, "Federal Consistency and Outer Continental Shelf Oil and Gas Leasing: The Application of the "Directly Affecting" Test to Pre-Lease Sale Activities" , 9 B.C. Envtl. Affairs L. Rev. 431, 433 (1980).

[49] Hooks and McCloskey, supra note 5, at 33.

[50] Id. at 34.

[51] Id. at 34. After receipt and evaluation of the exploration and development report specialized studies will issue as needed, covering such areas as socioeconomic, oil spill, air quality, and environmental ramifications. Id.

[52] Id. See also note 32 for a discussion of EIS's.

[53] 43 U.S.C. § 1423 (1976 & Supp. Ill 1979).

[54] Hooks and McCloskey, supra note 5, at 35.

[55] Id.

[56] 30 C.F.R. § 256.32 (1982).

[57] Hooks and McCloskey, supra note 5, at 35. The subsequent EIS's will be based on a case by case basis and a draft EIS (DEIS) will be filed with the U.S. Environmental Protection Agency (EPA) approximately twelve months after the Call for Information. Id.

[58] Id. at 36. These DEIS's will warn any prospective lessees of the precautions which need to be taken on any proposed lease tract such as the presence of an unstable seabed or fragile environmental conditions. Id.

[59] Id. The hearings will be held as close to the affected areas as possible. Id.

[60] Id. Copies of the FEIS will be made available to the public for inspection. Id.

[61] Id. Once these tracts are selected they will be published in the Proposed Notice of Sale, in the same month as the FEIS. Id.

[62] 43 U.S.C. § 1332 (1976 & Supp. Ill 1979).

[63] 43 U.S.C. § 1337 (1976 & Supp. Ill 1979).

[64] Hooks and McCloskey, supra note 5, at 37.

[65] 43 U.S.C. § 1337(a) (1976 and Supp. Ill 1979).

[66] Id. at § 1337(a) (1) (1976 and Supp. Ill 1979).

[67] Id.

[68] 30 C.F.R. § 256.41. Each year is broken into two six-month periods for bidding purposes. Id.

[69] Id.

[70] Id. The Secretary reserves the power to exempt a person from the list of "Restricted Joint Bidders" if the situation arises. Id. at (d).

[71] 43 U.S.C. § 1337 (1976 and Supp. Ill 1979).

[72] Id.

[73] Id.

[74] Id.

[75] Id.

[76] Hooks and McCloskey, supra note 5, at 41-42.

[77] id. at 42.

[78] Id. at 42.

[79] 30 C.F.R. § 250.34-1(a)(1) (1982).

[80] Id. at § 250.34-1(a)(1)(i-vi) (1982).

[81] Id. at § 250.34-1(a) (2) (i-ii) (1982).

[82] 43 C.F.R. § 2 (1982). The lessee shall include a written discussion in the plan of the general subject matter of the deleted portions. 30 C.F.R. § 34-1(a) (5) (1982) .

[83] 30 C.F.R. § 250.34-1(b)-(e)(1)(iii) (1982).

[84] Id.

[85] id. at § 250.34-1(e)(3)(f) (1982).

[86] Id. at § 250.34-1(g) (1982).

[87] Id. at § 250.34-1(i) (1982). Upon cancellation of the lease the lessee shall be entitled to compensation in accordance with 30 C.F.R. § 250.12. Id. at § 250.34-1(i) (1982).

[88] Id. at § 250.34-1 (j) (2) (k) (1982).

[89] CCS Order No. 2 §§ 8, 9, quoted in, Hooks and McCloskey, supra note 5, at 71.

[90] OCS Order No. 2 § 8. The contents of the H^S plan must be consistent with the requirements set fortn in the document: Safety Requirements for Drilling Operations in a Hydrogen Sulfide Environment. OCS Order No. 1, quoted in, Hooks and McCloskey, supra note 5, at 71.

[91] Hooks and McCloskey, supra note 5, at 71.

[92] Id. at 72-73.

[93] 30 C.F.R. § 250.34-3 (a)(1)(i)(A-G(8)) (1982). The plan must also include an assessment of the direct effects on the offshore and onshore environments. Id. at § 250.34-3 (a) (1) (ii) (1982) .

[94] Id. at § 250.34-3(a) (4) (i-ii) (1982). For specific directions on the filing of this report see 30 C.F.R. § 250. 34-3(a)(4)(ii) (1982), and 30 C.F.R. § 250.57 (1982).

[95] Supra, notes 78-92 and accompanying text.

[96] Hooks and McCloskey, supra note 5, at 95.

[97] Id. at 96-97.

[98] OCS Order No. 8, quoted in Hooks and McCloskey, supra note 5, at 96-97.

[99] Hooks and McCloskey, supra note 5, at 97.

[100] 30 C.F.R. § 250.36(b)(1) (1982).

[101] Id. at § 250.36(b)(2) (1982).

[102] Id. at § 250.37(a) (1982).

[103] Id.

[104] Id. at § 250.37(a), (c) (1982).

[105] Id. at § 250.34-4(a) (1982).

[106] Id. at § 250.34-4(a) (1982).

[107] Id. at § 250.34-4 (a)-(e) (1982).

[108] U.S. Dept, of Interior, Petroleum and Sulfur on the U.S. Continental Shelf 40-43 (Dec. 1969) . Transportation by tanker is much less dependable than by pipeline because tankers are subject to surface weather conditions. Also the pipeline provides a constant outlet for the produced crude, eliminating the need for storage capacity on a drilling rig. Malet, supra note 3, at n. 15.

[109] Hooks and McCloskey, supra note 5, at 119.

[110] 43 U.S.C. § 1334 (1976 & Supp. Ill 1979).

[111] Hooks and McCloskey, supra note 5, at 12-21. All proposed pipelines must also be fully described in the

development and production plan. Supra notes 95-107 and accompanying text.

[112] Hooks and McCloskey, supra note 5, at 121.

[113] Id. at 122. The hazards survey report must include the results of a high-resolution geophysical survey in the immediate area of the pipeline to determine the possible existence of hazards. Also the lessee must maintain the survey records for three years after the "as built" or "as constructed" drawings are submitted, and upon request, present them to the MMS. Id.

[114] Id. at 122-23. The archeological survey report is required if the right of way or portions thereof fall within the high probability cultural resource sensitivity zone and there has not been a previous archeological survey of the proposed right of way area. The survey must contain an archeological assessment, made by an archeologist, containing a description of the survey area and an archeological assessment indicating whether cultural resources exist, and, if so, how they can be protected during operations. Id.

[115] Id. at 123. A right of way permit may be acquired or held only by private corporations organized under the laws of the United States, the District of Columbia or any state. The proposed permittee must submit: 1) a certified copy of its Articles of Incorporation; 2) a copy of either the minutes of the meeting of the board of directors or the bylaws indicating that the person signing the application has authority to do so, or, in lieu of such a copy, a certificate to that effect signed by the secretary or the assistant secretary of the corporation over the corporate seal; or 3) if such articles of authority previously have been submitted to the MMS, an appropriate reference to the records submitted. Id.

[116] Id. at 124.

[117] Id.

[118] Id.

[119] 42 U.S.C. § 7401 (1976 & Supp. Ill 1979).

[120] Id.

[121] 16 U.S.C. §§ 1451-1464 (1972 & Supp. Ill 1979).

[122] California v. Secretary of the Interior, 52 U.S.L.W. 4063 (1984) answered in the negative the question of whether prelease activities require a CZMA consistency determination.

[123] 33 U.S.C. §§ 1501-1524 (1976).

[124] 42 U.S.C. §§ 7101 et seq (1976).

[125] 16 U.S.C. 1531 (1976) .

[126] 33 U.S.C. §§ 1251 et seq (1976).

[127] 49 U.S.C. § 3 (1976) .

[128] Malet, supra note 3, at 1144.

[129] 33 U.S.C. §§ 1471-1487 (1970).

[130] 33 U.S.C. 901 (1976). See also 43 U.S.C. §§ 1333(b) (1976) .

[131] 16 U.S.C. §§ 1361 et seq (1976).

[132] 33 U.S.C. §§ 1401 et seq (1970).

[133] 33 U.S.C. §§ 1101-1108 (1970).

[134] 43 U.S.C. §§ 155-58 (1970).

[135] 42 U.S.C. §§ 4321-4347 (1976).

[136] Armstrong and Ryner, Coastal Waters : A Management Analysis (Ann Arbor Science Publishers, Inc., 1978).

[137] 16 U.S.C. §§ 470 , 472 , 1600 et seq (1976).

[138] Hooks and McCloskey, supra note 5, at 13.

[139] 43 U.S.C. § 1333 (c) (1976).

[140] 43 U.S.C. §§ 1331 et seq (1976 and Supp. Ill 1979).

[141] 33 U.S.C. § 1221 (1976).

[142] 33 U.S.C. §§ 406, 418 (1970).

[143] 42 U.S.C. § 1962 (1970) .

[144] Armstrong and Ryner, supra note 135, at 56.

[145] Id. at 57. The Economic Development Administration's general purpose is providing funds to communities for projects that will improve the economic base and alleviate unemployment problems. Such problems have plagued and will undoubtedly continue to plague coastal communities due to rapid development. Id. at 58.

[146] The United States Government Manual 1983/84 p. 143. One of the major functions of the NOAA is to explore, map and chart the global ocean and its living resources and to manage, use and conserve those resources. Id.

[147] See, supra notes 119 and 120 and accompanying text.

[148] Armstrong and Ryner supra note 135, at 58.

[149] 43 U.S.C. § 1333(e) (1) (1976).

[150] Hooks and McCloskey, supra note 5, at 12.

[151] Armstrong and Ryner, supra note 135, at 59.

[152] Id. at 59.

[153] Hooks and McCloskey, supra note 5, at 12.

[154] rId.

[155] Armstrong and Ryner, supra note 135, at 61.

[156] Hooks and McCloskey, supra note 5, at 12.

[157] 43 U.S.C. § 1333(d) (1976). See also, Hooks and McCloskey, supra note 5, at 12.

[158] Hooks and McCloskey, supra note 5, at 51.